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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 492nd MEETING

Held at the Palais Wilson, Geneva,
on Friday, 16 November 2001, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Indonesia (CAT/C/47/Add.3)

1. At the invitation of the Chairman, Mr. Anshor and Ms. Rustam (Indonesia) took places at the Committee table.

2. Ms. RUSTAM (Indonesia) said that Indonesia's commitment to promoting and protecting human rights derived from Pancasila, the Indonesian State philosophy, which emphasized the Indonesian people's abhorrence of spiritual and physical maltreatment, whether of Indonesians or persons of any other nationality, regardless of ethnic or religious background, sex, social status or skin colour, thus implicitly ruling out the practice of torture.

3. Indonesia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1998. The country's endeavours to protect the human rights of its citizens had been given fresh impetus by the National Plan of Action on Human Rights 1998-2000. The Plan provided for training for law enforcement officers that incorporated international human rights instruments dealing with torture and arbitrary detention; studies and dissemination of information on humanitarian law; special programmes for judges and prosecutors; protection of vulnerable groups (women, children and labourers); and anti-riot training. Systematic implementation of the Plan would help to promote a culture of respect for human rights and greater social justice.

4. The Government's efforts to protect human rights in Indonesia had taken another step forward with the adoption of Law No. 26/2000, on the establishment of human rights courts; such courts had since been set up in regional and municipal capitals to try cases of gross violations of human rights. The Law covered such issues as torture, detention, witness protection and the compensation, restitution and rehabilitation of victims. Torture was listed as a crime against humanity and defined as "any action perpetrated as part of a broad or systematic direct attack on civilians", and the inflicting of "deliberate and illegal gross pain or suffering, physical as well as mental, on a detainee or person under surveillance". The Minster of Justice and Human Rights had indicated that the Government planned to appoint 60 career and non-career judges to permanent and ad hoc human rights courts by 1 December 2001. Pursuant to the provisions of the Law, the Government was currently finalizing the enactment of two other new legal measures, one on the protection of victims and witnesses and the other on the establishment of a Commission of Truth and Reconciliation to review past cases of human rights violations.

5. In a targeted effort to promote respect for human rights at all levels of the security and judicial systems, the Government had issued directives to all army officers, national police officers, judges and educational establishments on the handling of human rights situations. In 1999, a restructuring programme had been implemented separating the police from the armed

forces. Changes in the national legal system had ensured the independence of judges and the gradual transfer of administrative and financial control over the judiciary from the Department of Justice to the Supreme Court, a process expected to take five years.

6. The Government was determined to combat the impunity of persons involved in human rights abuses and uphold the principle of equality before the law for all citizens. Law No. 26/2000 allowed the authorities to punish perpetrators of acts of torture and placed such persons under the jurisdiction of the human rights courts. Legal provisions also existed on the classification of torture and guidelines for sentencing persons, whether Indonesian or foreign, found guilty of having used force to secure a confession. A number of soldiers, high-ranking military officers and former ministers of previous Governments had already been sentenced for their involvement in human rights violations. The Government also continued to facilitate routine prison visits by human rights monitors as well as the International Committee of the Red Cross. Indonesia also cooperated with other countries in criminal matters, but while its Criminal Code made torture an extraditable offence, the Government had yet to extradite a suspect either to or from Indonesia. The law governing extradition was currently under review.

7. To inculcate human rights values among young people, information campaigns and educational programmes had been conducted in universities and other institutions of higher learning. Seminars and workshops were organized on a regular basis throughout the country. At one such meeting, held on 20 June 2001, 150 delegates representing government and academic institutions and non-governmental organizations (NGOs) had discussed a variety of human rights issues, notably the principle of retroactivity. More recently, a nationwide police-training programme supported by the Office of the United Nations High Commissioner for Refugees (UNHCR) had been started to help the National Police incorporate principles of human rights and refugee law into their procedures, practices and training. More than 7,000 police officers from six Indonesian provinces, mainly Aceh and Irian Jaya, had completed the course, and an entire Brimob (special forces) battalion was currently being trained. Plans were under way to expand the scheme to other parts of Indonesia.

8. Human rights awareness in Indonesia had been hampered by decades of oppressive policies and attempts by certain parties to obstruct reform, as well as the 1997 financial crisis, the geographic dimensions of the archipelago, which rendered law enforcement difficult, and insufficient human resources. Indonesia was short of judges, having only 2,300 where 5,000 were needed. Despite recent economic and political upheaval, the Government was doing everything in its power to promote and protect human rights and looked forward to the Committee's contribution to that effort.

9. Ms. GAER, Country Rapporteur, said that it was gratifying that a country of Indonesia's size had ratified the Convention because it meant that many millions of persons could then enjoy its protection. She expressed appreciation for the country's initial report, although she noted that the Committee had received it in February 2001, a little more than one year late. Ratification of the Convention had been accompanied by reservations to articles 20 and 30. With regard to article 20, Indonesia had stated that the first three paragraphs must be implemented in strict compliance with the principles of the sovereignty and territorial integrity of States. She assured the delegation that that was not an issue for the Committee. Indonesia's reservation was presumably a reference to the principle of sovereign equality under the Charter of the

United Nations. In considering reports of States parties and monitoring compliance with treaty obligations, no human rights body had been more scrupulous than the Committee in treating all States parties in a similar fashion on the basis of sovereign equality, including with regard to the provisions of article 20. She noted also that Indonesia had not made the declarations provided for under articles 21 and 22, and she expressed the hope that it would do so in due course.

10. The initial report had been prepared in keeping with the Committee's guidelines, but its second section, on articles 2-16 of the Convention, presented only limited information on many of the articles. Insufficient attention had been given to the practical implementation of the Convention.

11. Recently there had been a number of positive developments in Indonesia in the area of human and civil rights, including the separation of the police from military control, the holding of the most democratic elections in decades, the appointment of a civilian Minister of Defence, the disbanding of certain internal security bodies, the flourishing of free expression and association, the official expression of apology with regard to East Timor and the adoption of legislation establishing the human rights courts.

12. She would focus her questions on the implementation of articles 1 to 9 of the Convention. Firstly, with regard to article 1, she pointed out that the references to the Constitution were too vague and open to interpretation to provide an effective safeguard against torture. The references to the philosophy of Pancasila and the principle of a just and civilized humanity (para. 3), said to protect against torture, were also very sweeping. Legislative Decree No. XVII of 1998 (para. 19) and Law No. 39/1999 (para. 20) laid down the right not to be tortured, but torture did not appear to be specifically prohibited in criminal law. In the more recent Law No. 26/2000 the prohibition of torture was much more restricted than in article 1 of the Convention, and article 422 of the Criminal Code did not include the possibility that torture might take place in detention. The Committee was pleased that the new Law provided for the prosecution not only of the perpetrators but also of persons in authority who had known of or had failed to prevent torture, and that military commanders were held responsible when they knew or ought to have known that their troops were perpetrating gross violations. But notwithstanding the assertion in paragraph 110, the concept of torture in Indonesia seemed to be narrower than the definition in the Convention. She asked whether Indonesia contemplated amending article 422 of the Criminal Code to explicitly prohibit torture and make it a separate offence and Law No. 26/2000 in order to bring its definition of crimes over which it had jurisdiction into line with the definitions in the Convention. She wondered whether the Law's temporal and geographical limitations might be broadened, as concern had been expressed that they were too narrow. She also noted that while the Ministry of Justice had publicly announced that the human rights courts would be established in December, no judges had yet been appointed.

13. She noted the adoption of a Constitutional amendment prohibiting the retroactive effect of new legislation, but was unsure whether that provision applied to crimes under Law No. 26/2000. The delegation should provide assurances that the principle of retroactivity applied to crimes against humanity.

14. With reference to article 2 of the Convention, she said that the report failed to provide sufficient detail on police custody, pre-trial detention and the scope of detainees' contacts with family members, lawyers and doctors. What obligations was the State party under to ensure that detainees enjoyed such access? While it was true that the Law of Criminal Procedure (KUHAP) made provision for habeas corpus, no similar provision existed in military law. The Committee would be grateful for a full account of the rules allocating jurisdiction between the ordinary and the military courts. She was particularly keen to hear the reporting State's comments on a number of incidents that had been handled by military courts, namely the Trisakti shooting, the Kopassus kidnapping and the killing of prisoners in Aceh. The sentences handed down in all those cases had been lenient, and no senior officers had been prosecuted. By way of comparison, the Bantaqiah case (paragraph 91 of the report) had been tried under a joint civilian-military procedure. The sentence handed down had been stiffer, but again no charges had been brought against senior officers. General information on plans to place military personnel under the jurisdiction of the civilian courts would be welcome.

15. Material available to the Committee indicated that investigations into alleged cases of torture in Indonesia rarely went to trial. What obstacles prevented the Indonesian authorities from bringing alleged torturers to justice? She had in mind the cases of the torture and extrajudicial killing of members of the humanitarian organization Rehabilitation Action for Torture Victims in Aceh (RATA) and the death in custody of students in Abepura.

16. The report was, on the whole, very descriptive, yet it contained few details regarding the application of the Convention in practice. More detailed statistics were required on the number of persons prosecuted for torture or ill-treatment, the judicial decisions handed down in each case, the compensation awarded to victims and recourse procedures. If possible, such information should be disaggregated by age, sex, and ethnicity. The delegation should also clarify whether there was a central register of detainees, whether registers were kept in individual detention facilities, and whether each detainee had a separate case-file. If no such records existed, were there plans to introduce any?

17. It was her understanding that the authorities were not obliged to guarantee a detainee's right to medical assistance or choice of legal counsel, except in the case of very serious crimes. The delegation should confirm whether that was indeed the case, and comment on reports that even when the State party was under an obligation to guarantee those rights, it had failed to do so. An update on the status of judicial supervision of conditions of detention would also be welcome.

18. The Committee had learned that the perpetrator of the crime in the Bantaqiah case had been convicted of murder rather than torture, which raised the question of the extent to which torture was criminalized under Indonesian law. Paragraph 91 of the report stated that, in passing sentence, the judges had taken account of the provisions of the Convention, yet the Committee had learned that the military commander involved had appeared as a witness but had never been charged or prosecuted. The delegation should elucidate his whereabouts and confirm whether he was liable to prosecution. Hypothetically, if an individual committed acts of torture or ill-treatment while acting in accordance with orders from a superior, could he be tried for his actions under existing Indonesian law?

19. Referring to article 3 of the Convention, she noted that Law No. 1 of 1979, on Extradition, prohibited extradition to a country which applied the death penalty, yet capital punishment existed in Indonesia. Did any provision in Indonesian law prevent a person from being extradited to a country where he or she risked being tortured, and had any such cases ever arisen?

20. With regard to article 4 of the Convention, she noted that article 422 of the Criminal Code prohibited an official from using force to secure a confession or to obtain information. That provision was overly restrictive because it excluded instances in which torture could be used as a means of punishment or a tool of discrimination. A definition of the term "maltreatment" as used in the Criminal Code would also be appreciated. Under the same article, the Committee had received frequent reports of rape and sexual violence employed as a form of torture. It appeared that rape was defined very narrowly in Indonesian law. Given the restrictive definition of sex crimes, exactly how many individuals had been prosecuted for rape or sexual abuse of persons in custody or of civilians, in the course of military operations?

21. With reference to article 5, she noted that Indonesian law did not appear to make provision for universal jurisdiction over crimes against humanity, including torture. The delegation should explain whether a torturer could be arrested and tried in Indonesia, and whether he could be extradited for such a crime.

22. Turning to article 6 of the Convention, she noted that articles 20-31 of the Law of Criminal Procedure (KUHAP) authorized an investigator, general prosecutor or a judge to detain suspects. She therefore wished to know whether an alleged torturer would be subject to pre-trial detention, and if so, under which article of the Criminal Code.

23. On a more general note, the report was strangely silent about the armed conflicts currently raging in various parts of Indonesia. The Special Rapporteur of the Commission on Human Rights on violence against women had reported that sexual violence and rape were routine occurrences in those areas. Because they lacked confidence in the police and judicial authorities, few victims ever complained. The delegation should indicate what was being done to encourage greater confidence in the law enforcement agencies and comment generally on the status of relevant police reforms. For example, cases involving sexual violence called for a higher degree of confidentiality and special measures to deal with trauma.

24. Given the many disturbing reports which the Committee had received concerning torture and ill-treatment in zones of conflict, the report's silence on those matters was all the more difficult to understand. She was aware that a number of Special Rapporteurs of the Commission on Human Rights had visited Indonesia, but it was unclear whether they had been permitted to visit areas of armed conflict. Particularly worrying were the many and various allegations that police and security officers enjoyed de facto impunity. The military seemed to operate with even fewer controls. The existence of one or two well-publicized exceptions to that trend (such as the aforementioned Bantaqiah case) should be viewed against that sombre background. It appeared that deadly force was commonly used to disperse demonstrators, and excessive force was often used in investigating armed attacks by separatists. What measures, if any, had been taken to investigate such allegations of torture or ill-treatment? How did the central authorities maintain control or supervise the armed forces in those areas? In the Molucca Islands, for example,

over 5,000 people had died in inter-community violence, thousands had been forced to flee their homes, and religious strife had been exacerbated. The emergence in the region of Laskar Jihad, a militant Islamic movement, was apparently at the root of the conflict, yet the Indonesian Government had made no effort to deal with that group. Most worrying of all, it was claimed that Laskar Jihad had ties to senior figures in the Indonesian military. Even worse, the United States Department of State considered it an international terrorist organization with links to Osama bin Laden. The Committee had received reports that members of Laskar Jihad had received weapons and training from the Indonesian army. What steps had the authorities taken to arrest the known leaders of Laskar Jihad and bring them to trial? There was a broad consensus that the international landscape had changed since 11 September 2001, and she wondered whether the Indonesian Government's attitude towards terrorist groups had also changed since then.

25. She wished to learn more about the suspected links between the police and the armed forces and paramilitary and vigilante groups. It had been reported, for example, that the army had not intervened to end violence by paramilitary groups during and after the referendum on independence in East Timor. She asked what steps the Government was taking to ensure oversight in such situations and to what extent law enforcement officers were aware of their obligations under the Convention against Torture.

26. She was somewhat concerned at reports that the Government of Indonesia was not cooperating fully with the United Nations Transitional Administration in East Timor (UNTAET). In particular, it had failed to provide information and files requested by UNTAET, and to transfer suspects for trial. She cited the case of Sayful Anwar, an officer in Indonesia's special forces, who had been indicted for crimes against humanity; a warrant for his arrest had been issued in December 2000 in connection with a number of murders. It had been reported that he was in Indonesia and still a member of the armed forces.

27. Mr. YU Mengjia, Alternate Country Rapporteur, said he realized that Indonesia was in a transitional stage and was attempting to safeguard national unity while also striving for economic and social development and endeavouring to reform its judicial system. However, it was important that the State party should realize that the defence of human rights and the elimination of torture would create favourable conditions for economic development and social progress.

28. Referring to article 10 of the Convention, he asked what measures the State party had taken, alone or in cooperation with the United Nations, to educate law enforcement officials in the principles underlying the Convention and what tangible results had been achieved. He also asked for specific examples of sanctions against officials responsible for torture to demonstrate compliance with article 11 of the Convention. He also wished to know how the rights of detainees were respected and whether the Code of Criminal Procedure would be revised to ensure that it was in conformity with the Convention.

29. There had been reports in the news media of violations of article 12 of the Convention, which provided for the prompt and impartial investigation of cases of torture. He asked if the State party could demonstrate, with specific examples, that it was meeting its obligations under

that article. A central registry of cases, while expensive to establish, would be extremely useful, particularly given the geography of Indonesia, and he wished to know whether the Government had any plans to establish such a registry.

30. With reference to article 13, he asked if there were reliable mechanisms in Indonesia to allow victims to submit complaints of torture and to protect victims and witnesses from intimidation or revenge. Violence perpetrated by detainees against other detainees appeared to be a problem, and he asked if Indonesia had a system in place to receive detainees' complaints and provide redress and compensation as required by article 14.

31. There had also been reports of confessions being extracted through the use of torture, particularly during states of emergency. That contravened article 15 of the Convention, and he wondered what the State party was doing to prevent such incidents.

32. He was also concerned at reports that cases of torture often involved refugees and other vulnerable groups. He asked what steps were being taken to protect those groups and, more generally, comply with article 16 of the Convention. Lastly, he regretted that a core document for Indonesia was not available to the Committee and wondered whether one could be provided.

33. Mr. RASMUSSEN said he recognized that there were enormous problems relating to human rights and torture in Indonesia, and that the changes the Government was trying to introduce would take a long time. The decision to separate the police and the armed forces was a significant improvement. However, according to an Amnesty International report, civilians continued to be held in military detention centres, and it was there that the risk of torture was greatest. Also, the police could detain suspects for 60 days before bringing them before a prosecutor and a further 170 days before presenting them to a judge, during which time the risk of torture was also very high.

34. The report dealt in a cursory manner with the issue of cruel, inhuman or degrading treatment during detention. Paragraph 117 merely referred to article 10 of the Criminal Code, which simply stated that there was no inhuman or degrading treatment or punishment in Indonesia, and article 422, subsection 1, which prohibited other forms of cruel treatment. However, reliable reports from NGOs showed that inhuman and degrading treatment had been inflicted during detention, and he asked what the State party was doing to address that issue. He also suggested that the Government might benefit from improved cooperation with NGOs: if such organizations were allowed to visit detention centres, they could make recommendations on how conditions could be improved.

35. The issue of support for torture victims who suffered from post-traumatic stress disorder was a major problem. The International Rehabilitation Council for Torture Victims (IRCT) had interviewed 750,000 individuals in East Timor and had discovered that 40 per cent had been tortured and 34 per cent suffered from post-traumatic stress disorder. He asked what plans the Government had to deal with that emergency situation. IRCT had tried to provide treatment; however, those who sought to help torture victims could also be subject to intimidation and torture. In December 2000, three volunteers working for Rehabilitation Action for Torture Victims in Aceh (RATA) had themselves been tortured and killed. Four civilians and four members of the armed forces had been arrested in connection with the killings, but the four

civilians had later escaped, possibly with the help of officials. In January 2001 the National Commission on Human Rights had agreed to conduct an inquiry, but no inquiry had taken place. Meanwhile staff at the rehabilitation centre in Aceh had been subjected to death threats and other forms of intimidation. He asked the delegation to provide information on that situation and on any actions the State party intended to take.

36. Lastly, he wanted to know what the State party was doing to ensure redress and compensation for torture victims, as required under article 14 of the Convention.

37. Mr. GONZÁLEZ POBLETE said he would like to have more details concerning procedure during the critical first phase of an investigation after a suspect had been taken into custody, when suspects were at greatest risk of being abused or tortured and the police were under pressure to extract a confession. It was not enough to have provisions to punish those guilty of abuse once it had occurred; there must also be safeguards to prevent abuse, including a clearly defined limit on the length of time a person could be detained before being brought before a judge, or before a judicial order was issued for their detention or for the prolongation of their detention. He would also like to know what other safeguards existed in Indonesia to protect the individual's human rights while in police custody and whether the police could hold a suspect without a judicial order in cases where the individual had not been caught in flagrante delicto.

38. Mr. MAVROMMATIS said that he had decided not to participate in the consideration of Indonesia's report because of his past work on human rights instruments with the Indonesian authorities. He did wish to say, however, that he had been impressed by the Government's willingness to make the necessary changes to its legislation, and he encouraged it to continue in that direction. It must be admitted that in the past the human rights situation in the country had been appalling, and while the country's new legislation was not perfect, great progress had been made. As the Government endeavoured to adapt its legislation to international norms, he would advise it to follow established texts for which international case law existed, thereby avoiding any wording that might prove ineffective. He sought to reassure the delegation that the adoption of human rights instruments and compliance with them did not encourage secessionist tendencies, but rather united the nation and strengthened territorial integrity.

39. The CHAIRMAN agreed with Mr. Mavrommatis that Indonesia had made great progress; however, it still had a long way to go in the process of transformation it had embarked upon. He had never been so forcefully struck by the discrepancy between the law on paper and the law in practice. In effect, it seemed that the new protection afforded by legislation had not yet really become operational. While political will clearly existed at the highest levels of government, the will of the military and the police to change their culture was far less apparent. He agreed with Mr. González Poblete on the need for protection during police custody, but wondered whether Indonesia had a separate regime governing military detention; he would welcome information on such matters as the length of time a person could be detained by the military and detainees' access to counsel and judicial review.

40. It was important to have a clear legal definition of torture and specific penalties for it in domestic legislation so that everyone concerned knew exactly where they stood. Vague legal texts were difficult to enforce, leaving bodies like the National Commission on Human Rights without teeth.

41. He would welcome comments on the extraordinary claims by the World Organization against Torture that private militias consisting of regular soldiers of the Indonesian army had been hired by private corporations to ensure their security, and that those militias had been responsible for atrocities. If those claims were true, he wished to know whether the soldiers had been hired out to work for the corporations in question by central or local army commanders; either way, responsibility for any atrocities they committed would lie with the Government.

42. He noted that the Special Rapporteur of the Commission on Human Rights on the question of torture had received only one reply to the 12 urgent appeals he had sent to the Indonesian Government (E/CN.4/2001/66, paras. 585-616); he wondered if the delegation could provide any information on the other 11 cases. As the Special Rapporteur had said, however ruthless the armed groups fighting for independence might be, there could be no justification for the security forces resorting to criminal human rights violations, and it was disheartening that the military seemed unable to learn the lesson from East Timor of the futility of such a strategy (para. 616). Clearly, the Government would need to make enormous efforts if its reform programme was to be successful.

43. Ms. GAER said that the protection of witnesses and victims, which was vital if people were to come forward and testify in cases of torture and ill-treatment, was likely to become even more important when the special human rights courts became operational. It was therefore essential to build up public confidence in Indonesia's institutions. One way to do that would be to publish the full reports of the National Commission on Human Rights (Komnas Ham) on its investigations, including those it had carried out in East Timor. Another would be to put the National Commission on a more solid legal footing, as recommended by the Working Group on Arbitrary Detention of the United Nations Commission on Human Rights. She drew attention to allegations by Human Rights Watch that National Commission members had actually obstructed action in key cases and to other allegations from a number of sources, including the Minority Rights Group, that the National Commission did not meet the minimum requirements of impartiality and independence expected of such an institution. She sought assurances that the new members about to be appointed to the National Commission would meet those requirements and asked for details of the Government's procedure for following up on the Commission's recommendations.

44. There were reports that large numbers of human rights defenders had been the victims of violence and had even been murdered, and that the country's Chinese minority was routinely victimized and terrorized. She understood that things were improving under President Wahid, but she would like to know what the Government proposed to do to protect those groups.

45. According to the International Crisis Group, the Jakarta newspapers regularly carried stories of mob justice, when locals with no confidence in the police or civil institutions took the law into their own hands and punished - even by burning to death - people caught committing petty crimes. Had the Government any plans for dealing with that problem?

46. She had also learned that the Government was intending to extend religious law in some parts of the country to cover matters other than land, inheritance and marriage. It would be interesting to know whether it had given any thought to the effects such a move would have on legislation prohibiting torture and ill-treatment.

47. Lastly, she would like to know of any measures the Government had taken or intended to take to prevent trafficking in persons, particularly of women and girls as sex workers, which was a serious problem not only in Asia but also in the Middle East and Europe. The World Organization against Torture had reported the case of a 15-year-old Indonesian girl who had been taken to Gaza to work as a servant. She had been abused by her employer and wished to return home. Were there any obstacles to her return? And did the Government provide for the rehabilitation of the victims of trafficking?

The meeting rose at 12.45 p.m.